IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 653 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RABARI KHIMA GANGA

Versus

THE STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 653 of 2003

MR UA TRIVEDI for Appellant No.

MR ASHISH M DAGLI for Appellant No.

MR HL JANI Ld. APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 21/10/2004

ORAL JUDGEMENT

1. This appeal is preferred by the appellants under sec. 374(2) of the Code of Criminal Procedure, against

the judgment and order dated 7.4.2003 delivered by the ld. Addl. Sessions Judge, 5th Fast Track Court, Veraval in Sessions Cases No. 23/2003 and 24/2002.

2. There were two sessions cases and in Sessions Case No. 24/2002, there were, in all, 14 accused, while in Sessions Case No. 23/2002, there was only one accused, named as Rabari Devashi Arjan. Since, both the sessions cases were arising out the same incident, were tried together by the ld. Addl. Sessions Judge and were disposed of by the aforesaid common judgment and order.

3. Acquitting 10 accused, out of 15 accused, ld. Addl. Sessions Judge, found present 5 appellants guilty for the offence under sec. 326 to read with section 149 of the Indian Penal Code, and each of the appellant was sentenced to undergo 7 years R/I and to pay fine of Rs. 3000/-, in default, to undergo R/I of 6 months. Each of the appellant also came to be convicted for the offence punishable under sec. 148 of the Indian Penal Code and was sentenced to undergo R/I of 2 years and to pay fine of Rs. 500/-, in default, to undergo 2 months R/I. No separate sentence under sec. 149 of the Indian Penal Code was awarded to any of the five appellants. It was also directed that complainant Kailashben as well as injured Shantuben be compensated to the tune of Rs. 7500/-each, according to sec. 257 of Code of Criminal Procedure from the amount of fine to be paid by each of the appellant. This judgment and order is impugned in this appeal.

4. As per the prosecution case, complainant Kailashben gave a complaint before the Veraval Police Station on 14.11.2001, at about 7.30AM, for the offence took place on 13.11.2001, at about 11.00 hrs. According to the prosecution case, Kailashben was staying in village Chikhalkuba, Taluka Una, in the jurisdiction of Gir Gadhada Police Station. On the date of the incident, her husband, brother of her husband Ramjibhai and uncle of her husband Kalubhai, were taken by the police at the Police Station in pursuance of the complaint filed by one Harijan Kalabhai and on that day only females were present at the house. Complainant as well as Shantuben, aunt of husband of complainant, Bharatbhai and Mukeshbhai brothers of husband of complainant had been to their agricultural land, situated outskirt of town, at that time, at about 11.00AM, all the accused came in a tractor and started beating these 4 persons, who were doing agricultural work in their field. Accused inflicted axe blow and stick blows on complainant Kailashben. Shantuben received injuries by axe, stick and pipes at

the hands of the accused. Complainant received injuries on her left leg and all over the body which resulted to fracture of left leg. They also received fist and kick blows. Shantuben had also fracture injury. Accused also took away one golden earring while running away from the place of incident. On complaint being filed, the same was registered, investigated and as aforesaid two charge-sheets came to be filed against, in all, 15 accused, and the case was committed to the Court of Sessions, and after hearing the parties, ld. trial judge convicted 5 accused - present appellants, out of 15 accused, as aforesaid.

5. In this appeal, ld. advocate Mr. Ashish Dagli for the appellants and ld. APP Mr. HL Jani for the respondent - State, were heard. Ld. advocate for the appellants restricted his contention only to the quantum of sentence and so far as the merits of the appeal is concerned, the same was not pressed. It was contended that out of 5 appellants, 4 are real brothers and are persons having family and children. In fact, there was a civil dispute about the agricultural land between the parties. Appellant no. 1 - Rabari Khima Ganga is aged about 42 years, appellant no. 2 - Dalit Devshi Kalabhai is aged about 24 years, appellant no. 3 Rabari Naran Ganga is aged about 49, appellant no. 4 Rabari Kanti Ganga is aged about 32 years and appellant no. 5 Rabari Rana Ganga is aged about 35 years, as on today. It was stated that appellants - Khima Ganga and Dalit Devshi were arrested on 15.11.2001, appellant Naran Ganga came to be arrested on 17.11.2001, appellant Kanti Ganga also came to be arrested on 17.11.2001 and appellant Rana Ganga came to be arrested on 29.1.2002. It is stated that since their arrest till today, they have not been released from jail, though during trial vide order of the Apex Court, they were directed to be released on bail, but before the bail order could be served, final judgment of the sessions case was pronounced by the trial court and hence, almost each of the appellants are in jail for about 3 years, though trial court in pursuance of the order of the Apex Court released the accused - appellants but since the final order was pronounced, the appellants-accused surrendered themselves. All through out, from the date of the arrest, each of the appellant is in jail, which period comes to about 3 years. None of the appellant has any criminal record. Each of the appellant is law abiding citizen and therefore it is urged that the sentence of imprisonment be reduced to undergone and an opportunity to reform themselves be provided to them by this court. The complainant, in whole episode had one grievous injury and that was a

fracture on left leg as well as injured Shantuben had injury of fracture on left arm, for which they were compensated by the order of the trial court. In this view of the matter, it was vehemently contended that the sentence awarded to each of the appellant be reduced to undergone. Ld. APP Mr. HL Jani was heard in this respect. He stated that if this Court considers to reduce the sentence, then the amount of fine awarded by the trial court be enhanced and the amount of compensation awarded to the complainant and injured, also is required to be enhanced.

6. From the above view of the matter and the contention raised on behalf of the appellants, it is clear that each of the appellant has undergone almost 2 years and 11 months imprisonment from the date of arrest till today. Their conviction slips from the record are perused. In the facts and circumstances of the case and the circumstances which are narrated by the ld. advocate for the appellants and since the appeal is not pressed on merits, 7 years imprisonment awarded by the ld. trial judge is required to be reduced and at the same time the amount of fine and the amount of compensation awarded to the complainant Kailashben and injured Shantuben is also required to be enhanced. It is reported by the ld. advocate for the appellants that 10 accused of the sessions cases were acquitted but no untoward incident has taken place till today.

7. In this view of the matter, this appeal is required to be allowed partly to the extent of modification of quantum of sentence and hence, following order is passed.

8. In the result, this appeal is partly allowed. While dismissing rest of the appeal of the appellants, the following interference is made in respect of quantum of sentence awarded to the appellants by the ld. trial court, as under, and to that extent, this appeal is partly allowed.

1) Each of the appellant is convicted for the offence punishable under sec. 326 to read with sec. 149 of Indian Penal Code and each of them sentenced to undergo 7 years R/I and to pay fine of Rs. 3000/-, in default, to undergo 6 months R/I. This sentence awarded by the trail court, is modified in this appeal to the extent that for the offence punishable under sec. 326 to read with sec. 149 of the Indian Penal Code, each of

the appellant is sentenced to suffer R/I for the period for which they have already undergone till today with enhanced amount of fine of Rs. 5000/instead of amount of fine of Rs. 3000/- as awarded by the ld. trial judge and in default, to undergo 6 months R/I.

2) Each of the appellant is found guilty for the offence punishable under sec. 148 of Indian Penal Code and is sentenced to undergo 2 years R/I and to pay fine of Rs. 500/-, in default, to undergo R/I of 2 months. Each of the appellant has already undergone the sentence of imprisonment of 2 years awarded to each of the appellant and no interference is required in the quantum of sentence awarded in this respect. However, each of the appellant is directed to pay enhanced amount of fine of Rs. 1000/-, instead of Rs. 500/-, and in default, to undergo 2 months R/I.

3) The amount of compensation awarded to the complainant Kailashben Himatbhai and injured Shantuben Kalabhai of Rs. 7500/- each, by the trial court, is enhanced to Rs. 10,000/- and it is directed that out of amount of fine to be recovered from the appellants, each of two witness - Kailashben Himatbhai and Shantuben Kalabhai be paid the compensation of Rs. 10,000/- each, as per sec. 257 of the Code of Criminal Procedure.

9. Rest of the judgment of the trial court is not interfered with. If the amount of fine as enhanced above is paid by each of the appellant, each of the appellant be released from jail forthwith, unless any of the appellants is required to be detained in jail for any other purpose. DS permitted.

(J.R. VORA, J.)
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